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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Southeast Technical Services

File: B-289065

Date: December 20, 2001

Robert Gibson for the protester.

Capt. Thomas A. Biediger, Alfred R. Nolting, Esq., and John G. Russell, Esq.,
Department of the Air Force, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that awardee's higher-priced quotation represented better value than protester's lower-priced one, where protester failed to provide required information demonstrating understanding of and ability to perform the requirement, and agency determined that awardee's manufacturer's certification demonstrated ability to perform and that its quotation therefore was worth higher price.

DECISION

Southeast Technical Services protests the issuance of a purchase order to Max Grigsby Company, Inc. d/b/a MGC, Inc. under request for quotations (RFQ) No. F41622-01-Q-0032, issued by the Department of the Air Force for the installation of Fisher Hamilton laboratory furniture. Southeast contends that it should have received the purchase order because its quoted price was lower than MGC's.

We deny the protest.

On September 25, 2001, the Air Force posted a combined synopsis/solicitation (the RFQ) on the Internet calling for the installation of Fisher Hamilton laboratory furniture, a commercial item, using simplified acquisition procedures. The RFQ set forth seven tasks, including, for example, disconnecting plumbing and electrical casework, removing existing casework, tops and sinks, removing concrete ledges, patching and painting, and installing the laboratory furniture as recommended by the manufacturer. The RFQ specified that vendors "shall address all the requirements in this combined synopsis/solicitation, and shall provide clear evidence of

understanding and the ability and willingness to comply with the Government's specifications of need." Agency Report (AR), Tab 9, Synopsis/Solicitation, at 6. Quotations were to be evaluated based on technical capability and price, with award to be made to the responsible vendor whose quotation, conforming to the RFQ, was most advantageous to the government, and the agency reserved the right to issue the purchase order without discussions. Id. Quotations were due by September 28.

The agency evaluated three quotations--the protester's at \$21,735, which was submitted in response to the RFQ, and two others, including MGC's at \$36,245 (the other is not relevant to the protest), which were received during market research conducted by the agency a few weeks prior to the publication of the synopsis/solicitation.¹ Although Southeast's price was low, it did not furnish any information regarding its understanding and ability to perform; it merely noted that Southeast had 35 years of experience with this type of work, and stated that "[w]e understand all aspects of this project and have installed this equipment before." AR, Tab 6, Southeast Quotation, at 1. MGC's quotation also did not contain detailed information on understanding and ability to perform, but did list the seven tasks required to perform the work; noted special considerations for reusing existing circuits, relocating circuits, and removing the concrete ledge under the existing cabinets; and provided a 4-week installation timeframe. AR, Tab 8, MGC's Quotation, at 1-2.

Because the agency could not determine from its quotation whether Southeast understood and had the ability to perform the project, the agency requested by telephone that the protester submit information that would allow the agency to evaluate the protester's understanding of the project; specifically, the agency asked the protester if it was a certified installer of Fisher Hamilton furniture. Supplemental Memorandum of Law at 2-3. In response, Southeast submitted a breakdown of its total price, consisting of six separate dollar amounts, presumably corresponding in some way to the seven project requirements listed in the combined synopsis/solicitation. AR, Tab 6, Southeast Revised Quotation, at 2. No additional information regarding Southeast's technical ability was included and the protester declined to confirm or deny that it was certified to install Fisher Hamilton furniture. Supplemental Memorandum of Law at 3.

¹ When the agency initially identified its need for laboratory furniture, it conducted market research to identify furniture suppliers and installers. Although, during this research, MGC and another firm submitted quotations for installation, the agency determined that funds were not immediately available for installation. Thereafter, potential biological threats associated with current events made installation an urgent requirement and the agency received funding. Contracting Officer's Statement at 1. MGC's quotation, with a 45-day acceptance period, was dated and received September 5. AR, Tab 1, Memorandum of Law, at 4; AR, Tab 8, MGC Quotation, at 1.

On September 28, the contracting officer checked the Fisher Hamilton web site, which lists all of the manufacturer's dealers by state, and found that MGC was listed as a lab furniture dealer.² Contracting Officer's Supplemental Statement at 1. See <http://fisherhamilton.com>. This research also showed that Southeast was not a dealer. This fact (Southeast does not dispute it), together with the lack of information from Southeast, led the agency to conclude that Southeast had not demonstrated an understanding of the requirement or its ability to perform. At the same time, the agency found that MGC's status as a dealer evidenced that firm's ability to install the furniture according to the manufacturer's specifications, and therefore concluded that MGC's higher-priced quotation represented the best value to the government. AR, Tab 1, Memorandum of Law at 2-3. Accordingly, on September 30, the contracting officer issued a purchase order to MGC.

Southeast asserts that it should have received the award based on its low price. It claims the Air Force could not have determined that MGC was more qualified to perform the work, and thus could not have made a proper best value determination, because it never requested references or other technical information on which to evaluate the offerors' qualifications. Protest at 1; Protester's Comments at 1.

In reviewing protests against an allegedly improper simplified acquisition evaluation and selection decision, we examine the record to determine whether the competition was fair and consistent with the solicitation, and whether the agency exercised its discretion reasonably. Elementar Americas, Inc., B-282698, July 16, 1999, 99-2 CPD ¶ 17 at 3.

The agency's actions here were reasonable. As noted, the RFQ expressly advised vendors to address all the requirements and to provide clear evidence of understanding and the ability to comply with the specifications. The RFQ also specifically stated that the agency would evaluate quotations on technical capability and price and issue a purchase order to the vendor whose quotation was most advantageous to the government; nothing in the RFQ suggested that award would be

² Although the agency characterizes MGC's status, as reflected on the web site, as that of a "certified installer" rather than a dealer, we find no reference to certified installers on the site. However, this does not appear to be a material distinction, since the protester does not challenge the agency's characterization, and the web site indicates that the dealers are particularly qualified to install the furniture; the dealers are described as "talented project management specialists who prefer to get involved in the earliest planning stages," and will participate in "design, budget, product management and installation [w]hether it's product renovation or entirely new construction" In response to Southeast's protest, the agency requested that MGC confirm that it was certified by Fisher Hamilton. MGC provided this confirmation in a memorandum dated October 2. AR, Tab 5, MGC Memorandum, at 1.

based on price alone. Despite the solicitation instructions, Southeast's submittal included nothing to show that it understood the requirement and no information regarding its technical abilities. While MGC's quotation contained only limited information, that information, together with the firm's association with Fisher Hamilton, provided the agency with a clear basis for discriminating between the proposals for purposes of the technical capability evaluation—it provided the desired assurance that MGC would perform as required—and, ultimately, the best value determination. Although status as a dealer (or certified installer) was not specifically identified in the RFQ as an evaluation consideration, since dealer status undisputedly related to technical capability, we think the agency's reliance on it was unobjectionable. (This is particularly so in light of the agency's broad discretion under the simplified acquisition procedures. See Federal Acquisition Regulation (FAR) part 13; West Coast Research Corp., B-281359, B-281359.2, Feb. 1, 1999, 99-1 CPD ¶ 27 at 4.) Given that the agency had no information from which it could determine that Southeast had the technical capability to perform the requirement, we find nothing unreasonable in the agency's conclusion that award to MGC was warranted despite its higher price.

Southeast asserts that MGC's quotation should not have been considered because it was not submitted in response to the RFQ. However, there is no requirement that agencies consider only quotations in response to an RFQ; under FAR § 13.103, a standing quotation properly may be considered in a simplified acquisition if it is current. As noted above, MGC's quotation, received in connection with the agency's earlier attempt to have the laboratory furniture installed, was current, with an acceptance period of 45 days after September 5. Southeast claims that MGC gained an unfair competitive advantage by submitting its quotation before the solicitation was advertised. However, both MGC's and Southeast's quotations were evaluated on the same basis, and the award decision had nothing to do with the times at which the quotations were submitted. There thus is no basis for finding that MGC enjoyed an unfair advantage.

The protester contends that the agency improperly failed to advertise the RFQ at least 10 days prior to the due date, and improperly favored local contractors, since it contacted only MGC and another local vendor before the solicitation was issued. Since Southeast was able to compete, and does not contend that it did not have adequate time to prepare and submit its quotation, we fail to see how it was prejudiced by these alleged improprieties. We will not sustain a protest absent a showing of prejudice. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

Anthony H. Gamboa
General Counsel